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E-filing

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2008 MAR -6 PM 3:25  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 LARRY WARREN, Individually,

12 Plaintiff,

13 vs.

14 CITY OF SANTA CRUZ, a public  
15 entity, SANTA CRUZ CHIEF OF  
16 POLICE HOWARD SKERRY, in his  
17 individual and official capacities, and  
18 DOES 1 through 10, Jointly and  
19 Severally,

20 Defendants.

08-0131  
COMPLAINT AND  
DEMAND FOR JURY TRIAL

RS

ADR

21 Plaintiff, by and through his attorneys, HADDAD & SHERWIN, for his Complaint  
22 against Defendants, states as follows:

23 JURISDICTION

24 1. This is a civil rights action arising from Defendants' unreasonable search,  
25 unreasonable seizure, and use of excessive force against Plaintiff LARRY WARREN  
26 ("WARREN"), on or about May 7, 2007, in the City of Santa Cruz, County of Santa Cruz,  
27 California. This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth  
28 and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded

1 upon 28 USC §§ 1331 and 1343(a)(3) and (4), and the aforementioned statutory and  
2 constitutional provisions. The amount in controversy herein, excluding interest and costs,  
3 exceeds the minimum jurisdictional limit of this Court. Plaintiff further invokes the  
4 supplemental jurisdiction of this Court pursuant to 28 USC §1367 to hear and decide  
5 claims arising under state law.  
6

#### 7 INTRADISTRICT ASSIGNMENT

8 2. A substantial part of the events, acts, and omissions complained of herein  
9 occurred in Santa Cruz County, California, and this action is properly assigned to the San  
10 Jose Division of the United States District Court for the Northern District of California.  
11

#### 12 PARTIES AND PROCEDURE

13 3. Plaintiff LARRY WARREN is a resident of the County of Santa Cruz,  
14 California.

15 4. Defendant CITY OF SANTA CRUZ is a public entity established and  
16 maintained by the laws and Constitution of the State of California, and owns, operates,  
17 manages, directs, and controls the Santa Cruz Police Department ("SCPD"), and  
18 employs and/or is responsible for other defendants in this action.

19 5. Defendant SANTA CRUZ CHIEF OF POLICE HOWARD SKERRY at all  
20 material times was the Chief of Police for the Santa Cruz Police Department, and was  
21 acting within the course and scope of that employment. He is sued in his individual and  
22 official capacities.  
23

24 6. The true names and capacities of Defendants sued herein as DOES 1-10  
25 ("DOE defendants") are unknown to Plaintiff, who therefore sues said Defendants by  
26 such fictitious names, and Plaintiff will seek leave to amend this complaint to show their  
27  
28

1 true names and capacities when the same are ascertained. Each DOE defendant was  
2 an employee/agent of the CITY OF SANTA CRUZ and the SCPD, and at all material  
3 times acted within the course and scope of that relationship.

4         7. Plaintiff is informed and believes and thereon alleges that each of the  
5 Defendants sued herein was negligently, wrongfully, and otherwise responsible in some  
6 manner for the events and happenings as hereinafter described, and proximately caused  
7 injuries and damages to Plaintiff. Further, one or more DOE defendants was at all  
8 material times responsible for the hiring, training, supervision, and discipline of one or  
9 more DOE Defendants.  
10

11         8. Plaintiff is informed and believes, and thereon alleges, that each of the  
12 Defendants was at all material times an agent, servant, employee, partner, joint venturer,  
13 co-conspirator, and/or alter ego of the remaining Defendants, and in doing the things  
14 herein alleged, was acting within the course and scope of that relationship. Plaintiff is  
15 further informed and believes, and thereon alleges, that each of the Defendants herein  
16 gave consent, aid, and assistance to each of the remaining Defendants, and ratified  
17 and/or authorized the acts or omissions of each Defendant as alleged herein, except as  
18 may be hereinafter otherwise specifically alleged.  
19

20         9. At all material times, each Defendant was jointly engaged in tortious  
21 activity, resulting in the deprivation of Plaintiff's constitutional rights and other harm.  
22

23         10. At all material times, each Defendant acted under color of the laws,  
24 statutes, ordinances, and regulations of the CITY OF SANTA CRUZ. Each individual  
25 Defendant is sued in his individual and official capacities.  
26  
27  
28

11. The acts and omissions of Defendants DOE 1-10 as set forth herein at all material times were pursuant to the actual customs, policies, practices and procedures of the CITY OF SANTA CRUZ and SCPD.

12. This complaint may be pled in the alternative pursuant to FRCivP 8(e)(2).

## GENERAL ALLEGATIONS

13. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

14. On or about on or about May 7, 2007, at approximately 8:30 am, Plaintiff WARREN was in his house located behind the main house at 547 Walk Circle, Santa Cruz, CA. Plaintiff had a reasonable expectation of privacy in his home. Upon information and belief, Defendant police officers were responding to a domestic violence call in the front house at that time.

15. At all relevant times, Plaintiff was peacefully and lawfully in his own home. Defendants had no warrant, probable cause, reasonable suspicion, or any other legal justification for entering Plaintiff's home, or arresting him, or using any force against him.

16. Plaintiff heard noises in the backyard, looked out and saw a uniformed police officer. The officer pointed at him and yelled something like "drop" or "freeze!"

17. Defendant Officer DOE 1 rushed up from behind Plaintiff WARREN in Plaintiff's home and tackled Plaintiff extremely forcefully, causing Plaintiff to land hard on his slate rock floor. The next thing Plaintiff remembered was being on the floor of his house, with a police officer laying on the floor next to him, telling him, "Don't move, paramedics are on their way."

18. Plaintiff WARREN turned onto his back and saw his lower leg/foot roll over and his leg bones protrude out. Defendant DOE 1 had caused multiple compound

1 fractures in Plaintiff's right leg. Plaintiff was taken by ambulance to the hospital, where  
2 he required lengthy treatment, including, but not limited to surgery. He subsequently  
3 required extensive nursing care and rehabilitation.

4 19. Defendants had no legal cause or suspicion to believe that Plaintiff had  
5 committed any crime or offense in connection with this incident, and Plaintiff was never  
6 charged with any crime or offense in connection with this incident.

7 20. At all material times, Plaintiff behaved peacefully and lawfully, never  
8 displayed any weapon, and posed no threat to anyone. The force used by Defendants  
9 against Plaintiff was unjustified and objectively unreasonable under the circumstances.

10 21. Defendants' entry into Plaintiff's home and seizure of Plaintiff was done  
11 without warrant, probable cause, reasonable suspicion, or other legal right, and was  
12 conducted unreasonably.

13 22. On July 13, 2007, Plaintiff WARREN served a claim on the City of Santa  
14 Cruz pursuant to the California Government Tort Claims Act. Defendants mailed Plaintiff  
15 a rejection of that claim on September 12, 2007.

16 23. Plaintiff's damages proximately caused by Defendant police officers  
17 include, but are not limited to:

- 18 a. Lost wages;
- 19 b. Lost earning capacity;
- 20 c. Medical expenses;
- 21 d. Severe physical injuries requiring surgery and extended  
22 hospitalization and rehabilitation, including but not limited to multiple  
23 fractures in Plaintiff's right leg;
- 24 e. Loss of consciousness with possible closed head injury;
- 25
- 26
- 27
- 28

- f. Pain and suffering, including emotional distress;
- g. Wrongful search, seizure and imprisonment;
- h. Violation of constitutional rights;
- i. Invasion of privacy;
- j. All damages and penalties recoverable under 42 USC §§ 1983 and 1988, and as otherwise allowed under California and United States statutes, codes, and common law.

**COUNT ONE**  
**-- 42 USC §1983 --**  
**DEFENDANTS DOES 1-10**

24. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

25. By the actions and omissions described above, Defendants DOE 1-10 violated 42 USC §1983, depriving Plaintiff of the following clearly-established and well-settled constitutional rights protected by the Fourth and Fourteenth Amendments to U.S. Constitution:

- a. The right to be free from unreasonable searches and seizures as secured by the Fourth and Fourteenth Amendments;
- b. The right to be free from illegal entry into one's home as secured by the Fourth and Fourteenth Amendments;
- c. The right to be free from false arrest as secured by the Fourth and Fourteenth Amendments;
- d. The right to be free from invasion of privacy as secured by the Fourth and Fourteenth Amendments.
- e. The right to be free from excessive and unreasonable force in the course of arrest or detention as secured by the Fourth and Fourteenth Amendments;

1 f. The right to privacy as secured by the Fourth and Fourteenth  
2 Amendments.

3 26. As a direct and proximate result of Defendants' acts and/or omissions as  
4 set forth above, Plaintiff sustained injuries and damages as set forth at paragraph 23,  
5 above.

6 27. Defendants subjected Plaintiff to their wrongful conduct, depriving Plaintiff  
7 of rights described herein, knowingly, maliciously, and with conscious and reckless  
8 disregard for whether the rights and safety of Plaintiff and others would be violated by  
9 their acts and/or omissions.

10 28. The conduct of Defendants DOES 1-10 entitles Plaintiff to punitive  
11 damages and penalties allowable under 42 USC §1983 and California law.

12 29. Plaintiff is also entitled to reasonable costs and attorney fees under 42 USC  
13 §1988 and applicable California codes and law.

14  
15 **COUNT TWO**  
16 **- 42 USC §1983 – Supervisory and Municipal Liability**  
17 **DEFENDANTS CITY OF SANTA CRUZ, HOWARD SKERRY,**  
18 **AND DOES 1-10**

19 30. Plaintiff realleges each and every paragraph in this complaint as if fully set  
20 forth here.

21 31. On information and belief, the unconstitutional actions and/or omissions of  
22 Defendants DOES 1-10, as well as other officers employed by or acting on behalf of  
23 Defendants CITY OF SANTA CRUZ and SCPD, were pursuant to the following customs,  
24 policies, practices, and/or procedures of the SCPD, stated in the alternative, which were  
25 directed, encouraged, allowed, and/or ratified by DEFENDANT HOWARD SKERRY and  
26 other policy making officers for the CITY OF SANTA CRUZ and the SCPD:  
27  
28

- a. To use or tolerate the use of excessive and/or unjustified force, including in the use of tackling and application of control holds during the seizure of a person;
- b. To engage in or tolerate unreasonable searches and seizures;
- c. To fail to use appropriate and generally accepted law enforcement procedures in handling domestic violence investigations;
- d. To fail to institute, require, and enforce proper and adequate training, supervision, policies, and procedures concerning searches, seizures and the use of control holds;
- e. To fail to institute, require, and enforce proper and adequate training, supervision, policies, and procedures concerning handling domestic violence investigations;
- f. To cover-up violations of constitutional rights by any or all of the following:
  - i. by failing to properly investigate and/or evaluate complaints or incidents of unlawful searches and seizures, excessive force, and/or handling of domestic violence investigations;
  - ii. by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police activity; and
  - iii. by allowing, tolerating, and/or encouraging police officers to: fail to file complete and accurate police reports; file false police reports; make false statements; intimidate, bias and/or "coach" witnesses to give false information and/or to attempt to bolster officers' stories; and/or obstruct or interfere with investigations of unconstitutional or unlawful police conduct, by withholding and/or concealing material information;
- g. To allow, tolerate, and/or encourage a "code of silence" among law enforcement officers and police department personnel, whereby an officer or member of the department does not provide adverse information against a fellow officer or member of the department or hold another member accountable for official misconduct; and,
- h. To use or tolerate inadequate, deficient, and improper procedures for handling, investigating, and reviewing complaints of officer misconduct, including claims made under California Government Code § 910 et seq.



1           32. Defendants CITY OF SANTA CRUZ, SCPD, SKERRY, and DOES 1-10  
2 failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and  
3 discipline Defendants DOES 1-10, and other law enforcement personnel, with deliberate  
4 indifference to Plaintiff's Constitutional rights, which were thereby violated as described  
5 above.

6  
7           33. The unconstitutional actions and/or omissions of Defendants DOES 1-10  
8 and other law enforcement personnel, as described above, were approved, tolerated  
9 and/or ratified by Defendant SKERRY and other policy making officers for the SCPD.  
10 Plaintiff is informed and believes, and thereupon alleges, the details of this incident have  
11 been revealed to the authorized policy makers within the CITY OF SANTA CRUZ and the  
12 SCPD, and that such policy makers have direct knowledge of the facts of this incident.  
13 Notwithstanding this knowledge, the authorized policy makers within the CITY OF  
14 SANTA CRUZ and the SCPD, including Defendant SKERRY, have approved of the  
15 conduct of Defendant Officers DOES 1-10 and other Police Department personnel, and  
16 have made a deliberate choice to endorse the decisions of those defendant officers and  
17 the basis for those decisions. By so doing, the authorized policy makers within the CITY  
18 OF SANTA CRUZ and the SCPD, including Defendant SKERRY have shown affirmative  
19 agreement with the individual defendant officers' actions, and have ratified the  
20 unconstitutional acts of the individual defendant officers.  
21  
22

23           34. The aforementioned customs, policies, practices, and procedures, the  
24 failures to properly and adequately hire, train, instruct, monitor, supervise, evaluate,  
25 investigate, and discipline, as well as the unconstitutional orders, approvals, ratification  
26 and toleration of wrongful conduct by Defendants CITY OF SANTA CRUZ, SCPD,  
27  
28

1 SKERRY, and DOES 1-10, were a moving force and/or a proximate cause of the  
 2 deprivations of Plaintiff's clearly-established and well-settled constitutional rights in  
 3 violation of 42 USC §1983, as more fully set forth in Paragraph 25, above.

4 35. Defendants subjected Plaintiff to their wrongful conduct, depriving Plaintiff  
 5 of rights described herein, knowingly, maliciously, and with conscious and reckless  
 6 disregard for whether the rights and safety of Plaintiff and others would be violated by  
 7 their acts and/or omissions.  
 8

9 36. As a direct and proximate result of the unconstitutional actions, omissions,  
 10 customs, policies, practices and procedures of Defendants CITY OF SANTA CRUZ,  
 11 SCPD, and DOES 1-10, as described above, Plaintiff sustained serious injury and is  
 12 entitled to damages, penalties, costs and attorney fees as set forth in paragraphs 26-29,  
 13 above, and punitive damages against DOES 1-10 in their individual capacities.  
 14

15 **COUNT THREE**  
 16 **-- VIOLATION OF CIVIL CODE §52.1 --**  
**ALL DEFENDANTS**

17 37. Plaintiff realleges each and every paragraph in this complaint as if fully set  
 18 forth here.

19 38. By their acts, omissions, customs, and policies, each Defendant acting in  
 20 concert/conspiracy, as described above, violated Plaintiff's rights under California Civil  
 21 Code §52.1, and the following clearly-established rights under the United States  
 22 Constitution and the California Constitution:  
 23

- 24 a. The right to be free from unreasonable searches and seizures as  
 secured by the Fourth and Fourteenth Amendments;
- 25 b. The right to be free from excessive and unreasonable force in the  
 26 course of arrest or detention as secured by the Fourth and Fourteenth  
 27 Amendments;  
 28

- c. The right to be free from invasion of privacy or illegal entry into one's home as secured by the Fourth and Fourteenth Amendments;
- d. The right to enjoy and defend life and liberty, acquire, possess and protect property, and pursue and obtain safety, happiness and privacy, as secured by the California Constitution, Article 1, Section 1;
- e. The right to life, liberty and property and not to be deprived of those without due process of law as secured by the California Constitution, Article 1, Section 7;
- f. The right to be free from unlawful and unreasonable search and seizure of one's person as secured by the California Constitution, Article 1, Section 13;
- g. The right to be free from unreasonable or excessive force, as secured by the California Constitution, Article 1, Section 13;
- h. The right to protection from bodily restraint, harm, or personal insult, as secured by Civil Code § 43.

39. As a direct and proximate result of Defendants' violation of California Civil Code §52.1 and of Plaintiff's rights under the United States and California Constitutions and statutes, Plaintiff sustained injuries and damages, and is entitled to relief as set forth above at ¶¶ 26-29, and all damages allowed by California Civil Code §§52, 52.1, and California law, not limited to costs, attorneys fees, treble damages, and civil penalties.

**COUNT FOUR**  
**-- NEGLIGENCE; PERSONAL INJURIES --**  
**ALL DEFENDANTS**

40. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

41. At all times, each Defendant owed Plaintiff the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

42. At all times, each Defendant owed Plaintiff the duty to act with reasonable care.

1           43.    These general duties of reasonable care and due care owed to Plaintiff by  
2 all Defendants include but are not limited to the following specific obligations:

- 3                   a.    to refrain from using excessive and/or unreasonable force against  
4                   Plaintiff;
- 5                   b.    to refrain from wrongfully entering Plaintiff's home and/or arresting  
6                   and/or detaining Plaintiff;
- 7                   c.    to use generally accepted police procedures and tactics that are  
8                   reasonable and appropriate for investigations on private property and  
9                   domestic violence calls;
- 10                  d.    to refrain from abusing their authority granted them by law;
- 11                  e.    to refrain from violating Plaintiff's rights guaranteed by the United  
12                  States and California Constitutions, as set forth above, and as  
13                  otherwise protected by law.

14           44.    Additionally, these general duties of reasonable care and due care owed to  
15 Plaintiffs by Defendants CITY OF SANTA CRUZ, SCPD, SKERRY, and Does 1-10,  
16 include but are not limited to the following specific obligations:

- 17                   a.    to properly and adequately hire, investigate, train, supervise, monitor  
18                   and discipline their employees, agents, and/or SCPD officers to  
19                   ensure that those employees/agents/officers act at all times in the  
20                   public interest and in conformance with law;
- 21                   b.    to make, enforce, and at all times act in conformance with policies  
22                   and customs that are lawful and protective of individual rights,  
23                   including Plaintiff's;
- 24                   c.    to refrain from making, enforcing, and/or tolerating the wrongful  
25                   policies and customs set forth at paragraph 31, above.

26           45.    Defendants, through their acts and omissions, breached each and every  
27 one of the aforementioned duties owed to Plaintiff.

28           46.    As a direct and proximate result of Defendants' negligence, Plaintiff  
sustained injuries and damages, and is entitled to relief as set forth above at ¶¶ 26-29.

**COUNT FIVE**  
**-- ASSAULT AND BATTERY --**  
**DEFENDANTS DOES 1-10, AND CITY OF SAN JOSE**

47. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

48. The actions and omissions of Defendants as set forth above constitute assault and battery.

49. As a direct and proximate result of Defendants' assault and battery of Plaintiff, Plaintiff sustained injuries and damages, and is entitled to relief as set forth above at ¶¶ 26-29.

**COUNT SIX**  
**-- DIRECT VIOLATION OF CALIFORNIA CONSTITUTION --**  
**ALL DEFENDANTS**

50. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

51. Through their actions, omissions, customs, and policies as described above, each Defendant acting in concert/conspiracy as described above, violated Plaintiff's rights protected by the California Constitution, including but not limited to the following:

- a. The right to enjoy and defend life and liberty, acquire, possess and protect property, and pursue and obtain safety, happiness and privacy, as secured by the California Constitution, Article 1, Section 1;
- b. The right to be free from unlawful and/or unreasonable seizure of one's person as secured by the California Constitution, Article 1, Section 13;

52. As a direct and proximate result of Defendants' violation of the rights of Plaintiff under the California Constitution, Plaintiff sustained injuries and damages, and is

1 entitled to relief as described above at ¶¶ 26-29, including compensatory and punitive  
2 damages and penalties, and attorneys' fees and costs.  
3

4 WHEREFORE, Plaintiff respectfully requests the following relief against each and  
5 every Defendant herein, jointly and severally:  
6

- 7 a. compensatory and exemplary damages in an amount according to  
proof and which is fair, just and reasonable;
- 8 b. punitive damages under 42 USC §1983 and California law in an  
9 amount according to proof and which is fair, just, and reasonable;
- 10 c. all other damages, penalties, costs, interest, and attorney fees as  
11 allowed by 42 USC §§ 1983 and 1988, Cal. Civil Code §§ 52 et seq.,  
12 52.1, Cal. Code of Civ. Proc. 1021.5, and as otherwise may be  
allowed by California and/or federal law;
- 13 d. Injunctive relief, including but not limited to the following:
- 14 i. an order prohibiting Defendants and their  
15 police officers from unlawfully interfering with the  
16 rights of Plaintiff and others to be free from  
17 unreasonable searches and seizures and  
excessive and unreasonable force;
- 18 ii. an order requiring Defendants to institute  
19 and enforce appropriate and lawful policies and  
20 procedures for handling domestic violence calls  
and investigations on private property, including the  
21 search, seizure and use of force during such calls  
and investigations;
- 22 iii. an order prohibiting Defendants and their  
23 police officers from engaging in the "code of  
24 silence" as may be supported by the evidence in  
this case;
- 25 iv. an order requiring Defendants to train all  
26 SCPD Officers concerning generally accepted and  
proper tactics and procedures for handling  
27 domestic violence calls and investigations on  
private property and this Court's orders concerning  
28

1 the issues raised in injunctive relief requests i-iii,  
2 above;

- 3 e. such other and further relief as presented by the evidence in this  
4 case and as this Court may deem appropriate.

5 DATED: March 6, 2008

HADDAD & SHERWIN

7  
8 /s/

MICHAEL J. HADDAD  
JULIA SHERWIN  
Attorneys for Plaintiff

**JURY DEMAND**

Plaintiff hereby requests a trial by jury.

DATED: March 6, 2008

HADDAD & SHERWIN

A large, bold, handwritten signature in black ink, appearing to read "Haddad", is written over a horizontal line.

MICHAEL J. HADDAD  
JULIA SHERWIN  
Attorneys for Plaintiff



**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

**I.(a) PLAINTIFFS**

LARRY WARREN, Individually,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

Santa Cruz

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael J. Haddad, Haddad & Sherwin, 505 Seventeenth St.,  
Oakland, CA 94612; Tel: (510) 452-5500

**DEFENDANTS**

CITY OF SANTA CRUZ, a public entity, SANTA CRUZ CHIEF  
OF POLICE HOWARD SKERRY, in his individual and official  
capacities, and DOES 1 through 10, Jointly and Severally,

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED.

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)
☐ 1 U.S. Government  
Plaintiff

☐ 2 U.S. Government  
Defendant

☒ 3 Federal Question  
(U.S. Government Not a Party)

☐ 4 Diversity  
(Indicate Citizenship of Parties in  
Item III)
**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF  
(For diversity cases only) AND ONE BOX FOR DEFENDANT)

PTF DEF  
Citizen of This State ☐ 1 ☐ 1  
Citizen of Another State ☐ 2 ☐ 2  
Citizen or Subject of a  
Foreign Country ☐ 3 ☐ 3

PTF DEF  
Incorporated or Principal Place  
of Business in This State ☐ 4 ☐ 4  
Incorporated and Principal Place  
of Business in Another State ☐ 5 ☐ 5  
Foreign Nation ☐ 6 ☐ 6

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

☒ Original  
Proceeding

☐ Removed from  
State Court

☐ Remanded from  
Appellate Court

☐ Reinstated or  
Reopened

☐ Transferred from  
Another district  
(specify)

☐ Multidistrict  
Litigation

☐ Appeal to District  
Judge from Magistrate  
Judgment
**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant <input type="checkbox"/> 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 570 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**VI. CAUSE OF ACTION** (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT  
CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Claims for damages, injunctive relief, attorneys' fees and costs arising from police officers' unlawful search, seizure, and use of excessive  
force, in violation of 42 USC § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and state law

**VII. REQUESTED IN COMPLAINT:** ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint:  
UNDER F.R.C.P. 23 JURY DEMAND: ☒ YES ☐ NO

**VIII. RELATED CASE(S)** PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
IF ANY "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT** (CIVIL L.R. 3-2)  
(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

☒ SAN JOSE

DATE 3/6/08 SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44  
Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.